

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

POWERTECH TECHNOLOGY INC., a  
Taiwanese corporation,

Plaintiff,

vs.

TESSERA, INC., a Delaware corporation,

Defendant.

Case No. 4:11-cv-06121-CW

STIPULATED PROTECTIVE ORDER FOR  
LITIGATION INVOLVING PATENTS,  
HIGHLY SENSITIVE CONFIDENTIAL  
INFORMATION AND/OR TRADE SECRETS

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
2 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
4 the standards that will be applied when a party seeks permission from the court to file material  
5 under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how  
10 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
11 Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
13 (as well as their support staff).

14 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY  
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

16 2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or  
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

19 2.6 Disclosure or Discovery Material: all items or information, regardless of  
20 the medium or manner in which it is generated, stored, or maintained (including, among other  
21 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
22 or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
25 expert witness or as a consultant in this action, (2) is not a past or current employee of a Party  
26 or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an  
27 employee of a Party or of a Party's competitor.  
28

1                   2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
2 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to  
3 another Party or Non-Party would create a substantial risk of serious harm that could not be  
4 avoided by less restrictive means.

5                   2.9 House Counsel: attorneys who are employees of a party to this action.  
6 House Counsel does not include Outside Counsel of Record or any other outside counsel.

7                   2.10 Non-Party: any natural person, partnership, corporation, association, or  
8 other legal entity not named as a Party to this action.

9                   2.11 Outside Counsel of Record: attorneys who are not employees of a party to  
10 this action but are retained to represent or advise a party to this action and have appeared in this  
11 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
12 that party.

13                   2.12 Party: any party to this action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
15 staffs).

16                   2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this action.

18                   2.14 Professional Vendors: persons or entities that provide litigation support  
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
20 organizing, storing, or retrieving data in any form or medium) and their employees and  
21 subcontractors.

22                   2.15 Protected Material: any Disclosure or Discovery Material that is designated  
23 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24                   2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
25 from a Producing Party.

26                   3.     SCOPE

27                   The protections conferred by this Stipulation and Order cover not only Protected  
28 Material (as defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
2 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
3 Material. However, the protections conferred by this Stipulation and Order do not cover the  
4 following information: (a) any information that is in the public domain at the time of disclosure to  
5 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
6 a result of publication not involving a violation of this Order, including becoming part of the  
7 public record through trial or otherwise; and (b) any information known to the Receiving Party  
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
9 obtained the information lawfully and under no obligation of confidentiality to the Designating  
10 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations  
13 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
14 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal  
15 of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein  
16 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
17 action, including the time limits for filing any motions or applications for extension of time  
18 pursuant to applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
21 Party or Non-Party that designates information or items for protection under this Order must  
22 take care to limit any such designation to specific material that qualifies under the appropriate  
23 standards. To the extent it is practical to do so, the Designating Party must designate for  
24 protection only those parts of material, documents, items, or oral or written communications  
25 that qualify – so that other portions of the material, documents, items, or communications for  
26 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process or to impose unnecessary  
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

3           If it comes to a Designating Party's attention that information or items that it  
4 designated for protection do not qualify for protection at all or do not qualify for the level of  
5 protection initially asserted, that Designating Party must promptly notify all other parties that it is  
6 withdrawing the mistaken designation.

7           5.2 Manner and Timing of Designations. Except as otherwise provided in this  
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
9 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be  
10 clearly so designated before the material is disclosed or produced.

11           Designation in conformity with this Order requires:

12           (a) for information in documentary form (e.g., paper or electronic documents,  
13 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
14 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
15 EYES ONLY" to each page that contains protected material. Where it is not practicable to affix a  
16 legend to each page, the Producing Party must affix the legend to the Protected Material by a  
17 similar means sufficient to clearly identify the designation applied to the Protected Material. If  
18 only a portion or portions of the material on a page qualifies for protection, the Producing Party  
19 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
20 margins) and must specify, for each portion, the level of protection being asserted.

21           A Party or Non-Party that makes original documents or materials available for  
22 inspection need not designate them for protection until after the inspecting Party has indicated  
23 which material it would like copied and produced. During the inspection and before the  
24 designation, all of the material made available for inspection shall be deemed "HIGHLY  
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
26 documents it wants copied and produced, the Producing Party must determine which documents,  
27 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
28 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains  
2 Protected Material. Where it is not practicable to affix a legend to each page, the Producing Party  
3 must affix the legend to the Protected Material by a similar means sufficient to clearly identify the  
4 designation applied to the Protected Material. If only a portion or portions of the material on a  
5 page qualifies for protection, the Producing Party also must clearly identify the protected  
6 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
7 portion, the level of protection being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
9 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
10 other proceeding, all protected testimony and specify the level of protection being asserted. When  
11 it is impractical to identify separately each portion of testimony that is entitled to protection and it  
12 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
13 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
14 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
15 sought and to specify the level of protection being asserted. Only those portions of the testimony  
16 that are appropriately designated for protection within the 21 days shall be covered by the  
17 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at  
18 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
19 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY.”

21 Parties shall give the other parties notice if they reasonably expect a deposition,  
22 hearing or other proceeding to include Protected Material so that the other parties can ensure that  
23 only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
24 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
25 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
26 – ATTORNEYS’ EYES ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on the title  
28 page that the transcript contains Protected Material, and the title page shall be followed by a list of

1 all pages (including line numbers as appropriate) that have been designated as Protected Material  
2 and the level of protection being asserted by the Designating Party. The Designating Party shall  
3 inform the court reporter of these requirements. Any transcript that is prepared before the  
4 expiration of a 21-day period for designation shall be treated during that period as if it had been  
5 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless  
6 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
7 actually designated.

8 (c) for information produced in some form other than documentary and for any  
9 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
10 container or containers in which the information or item is stored the legend "CONFIDENTIAL"  
11 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of  
12 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
13 identify the protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
15 to designate qualified information or items does not, standing alone, waive the Designating  
16 Party's right to secure protection under this Order for such material. Upon timely correction of  
17 a designation, the Receiving Party must make reasonable efforts to assure that the material is  
18 treated in accordance with the provisions of this Order.

## 19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
21 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
22 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
23 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
24 does not waive its right to challenge a confidentiality designation by electing not to mount a  
25 challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
27 resolution process by providing written notice of each designation it is challenging and  
28 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been

1 made, the written notice must recite that the challenge to confidentiality is being made in  
2 accordance with this specific paragraph of the Protective Order. The parties shall attempt to  
3 resolve each challenge in good faith and must begin the process by conferring directly (in voice  
4 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
5 of service of notice. In conferring, the Challenging Party must explain the basis for its belief  
6 that the confidentiality designation was not proper and must give the Designating Party an  
7 opportunity to review the designated material, to reconsider the circumstances, and, if no  
8 change in designation is offered, to explain the basis for the chosen designation. A Challenging  
9 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
10 and confer process first or establishes that the Designating Party is unwilling to participate in  
11 the meet and confer process in a timely manner.

12           6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
14 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
15 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
16 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
17 Each such motion must be accompanied by a competent declaration affirming that the movant  
18 has complied with the meet and confer requirements imposed in the preceding paragraph.  
19 Failure by the Designating Party to make such a motion including the required declaration  
20 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
21 designation for each challenged designation. In addition, the Challenging Party may file a  
22 motion challenging a confidentiality designation at any time if there is good cause for doing so,  
23 including a challenge to the designation of a deposition transcript or any portions thereof. Any  
24 motion brought pursuant to this provision must be accompanied by a competent declaration  
25 affirming that the movant has complied with the meet and confer requirements imposed by the  
26 preceding paragraph.

27           The burden of persuasion in any such challenge proceeding shall be on the  
28 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass



1 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
2 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
3 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
4 material in question the level of protection to which it is entitled under the Producing Party's  
5 designation until the court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
8 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
9 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
10 disclosed only to the categories of persons and under the conditions described in this Order.

11 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
12 section 15 below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a  
14 location and in a secure manner that ensures that access is limited to the persons authorized under  
15 this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
17 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
18 disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
21 information for this litigation;

22 (b) the officers, directors, and employees (including House Counsel) of the  
23 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
24 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom  
26 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
27 and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is  
5 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
6 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
7 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
8 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
9 under this Stipulated Protective Order.

10 (g) the author or recipient of a document containing the information or a  
11 custodian or other person who otherwise possessed or knew the information.

12 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
13 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by  
14 the Designating Party, a Receiving Party may disclose any information or item designated  
15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
17 employees of said Outside Counsel of Record;

18 (b) Designated House Counsel of the Receiving Party (1) who has no  
19 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for  
20 this litigation, (3) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
21 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

22 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
23 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be  
24 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
25 have been followed;

26 (d) the court and its personnel;

27  
28

1 (e) court reporters and their staff, professional jury or trial consultants, mock  
2 jurors and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
3 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

4 (f) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information.

6 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY  
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Designated House  
8 Counsel or Experts.

9 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
10 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or  
11 item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
12 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that sets  
13 forth the full name of the Designated House Counsel and the city and state of his or her residence.  
14 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information under this provision  
15 may be disclosed to Renee DuBord Brown, Senior Vice President, Litigation and Sriranga  
16 Veeraraghavan, Senior Director of Litigation, from Tessera.

17 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
18 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
19 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
20 EYES ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating  
21 Party that (1) sets forth the full name of the Expert and the city and state of his or her primary  
22 residence, (2) attaches a copy of the Expert's current resume, (3) identifies the Expert's current  
23 employer(s), (4) identifies each person or entity from whom the Expert has received compensation  
24 or funding for work in his or her areas of expertise or to whom the expert has provided  
25 professional services, including in connection with a litigation, at any time during the preceding  
26 five years,<sup>1</sup> and (5) identifies (by name and number of the case, filing date, and location of court)

27  
28 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be

1 any litigation in connection with which the Expert has offered expert testimony, including through  
2 a declaration, report, or testimony at a deposition or trial, during the preceding five years.

3  
4 (b) A Party that makes a request and provides the information specified in the  
5 preceding respective paragraphs may disclose the subject Protected Material to the identified  
6 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
7 receives a written objection from the Designating Party. Any such objection must set forth in  
8 detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with  
10 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
11 agreement within seven days of the written objection. If no agreement is reached, the Party  
12 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
13 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order  
14 62, if applicable) seeking permission from the court to do so. Any such motion must describe the  
15 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated  
16 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure  
17 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
18 any such motion must be accompanied by a competent declaration describing the Parties' efforts  
19 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
20 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
21 approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to Designated House  
23 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure  
24 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the  
25 Protected Material to its Designated House Counsel or Expert.

26  
27 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the  
28 Expert shall be available to meet and confer with the Designating Party regarding any such  
engagement.

1           8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION

3           If a Party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6           (a)     promptly notify in writing the Designating Party. Such notification shall  
7 include a copy of the subpoena or court order;

8           (b)     promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
11 Protective Order; and

12           (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
13 the Designating Party whose Protected Material may be affected.

14           If the Designating Party timely seeks a protective order, the Party served with the  
15 subpoena or court order shall not produce any information designated in this action as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
17 determination by the court from which the subpoena or order issued, unless the Party has obtained  
18 the Designating Party’s permission. The Designating Party shall bear the burden and expense of  
19 seeking protection in that court of its confidential material – and nothing in these provisions  
20 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
21 lawful directive from another court.

22           9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
23 THIS LITIGATION

24           (a)     The terms of this Order are applicable to information produced by a Non-  
25 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with  
27 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
28 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce  
2 a Non-Party's confidential information in its possession, and the Party is subject to an agreement  
3 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 1. promptly notify in writing the Requesting Party and the Non-Party  
5 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
6 Party;

7 2. promptly provide the Non-Party with a copy of the Stipulated  
8 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
9 description of the information requested; and

10 3. make the information requested available for inspection by the Non-  
11 Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court  
13 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
14 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
15 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
16 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
17 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
18 burden and expense of seeking protection in this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
21 Protected Material to any person or in any circumstance not authorized under this Stipulated  
22 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
23 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
24 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made  
25 of all the terms of this Order, and (d) request such person or persons to execute the  
26 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1           11.    DISCLOSURE OF PRIVILEGED INFORMATION

2           The production of Disclosure or Discovery Material (including documents) in this  
3 action which a Party or Non-Party later claims should not have been produced because of a  
4 privilege or protection from discovery, including but not limited to the attorney-client privilege,  
5 work product privilege, and/or joint defense privilege shall not be deemed to waive any privilege  
6 or protection from discovery. A Party or Non-Party may request the return or destruction of such  
7 Disclosure or Discovery Material and that request shall identify the Disclosure or Discovery  
8 Material and the basis for requesting its return. If a Receiving Party receives Disclosure or  
9 Discovery Material that the Receiving Party believes may be subject to a claim of privilege or  
10 protection from discovery, the receiving party shall promptly identify the Disclosure or Discovery  
11 Material to the Producing Party or Non-Party. Upon identification of the Disclosure or Discovery  
12 Material by the Producing Party or Non-Party or by the Receiving Party, a Receiving Party: 1)  
13 shall not use, and shall immediately cease any prior use of, such Disclosure or Discovery Material;  
14 2) shall take reasonable steps to retrieve the Disclosure or Discovery Material from others to  
15 which the Receiving Party disclosed the Disclosure or Discovery Material; 3) shall within five (5)  
16 business days of the Producing Party's or Non-Party's request return to the Producing Party or  
17 Non-Party or destroy the Disclosure or Discovery Material and destroy all copies thereof; and 4)  
18 shall confirm to the Producing Party or Non-Party the destruction under subsection 3) above of all  
19 copies of the Disclosure or Discovery Material not returned to the Producing Party or Non-Party.  
20 No one shall use the fact of production of the Disclosure or Discovery Material to argue that any  
21 privilege or protection has been waived. Within fourteen (14) days of the identification of the  
22 Disclosure or Discovery Material by the Producing Party or Non-Party or by the Receiving Party,  
23 and not thereafter, the Receiving Party may file a motion to compel the production of the  
24 Disclosure or Discovery Material on the basis that: (a) the information was never privileged or  
25 protected from disclosure; or (b) any applicable privilege or immunity has been waived by some  
26 act other than the production of the Disclosure or Discovery Material. The Producing Party or  
27 Non-Party and the Receiving Party shall meet and confer in accordance with applicable law or  
28 Court rules regarding any such motion to compel. Notwithstanding this provision, no party shall

1 be required to return or destroy any Disclosure or Discovery Material that may exist on any  
2 disaster recovery backup system.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
8 producing any information or item on any ground not addressed in this Stipulated Protective  
9 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any  
10 of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating  
12 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
13 file in the public record in this action any Protected Material. A Party that seeks to file under  
14 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
15 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
16 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only  
17 upon a request establishing that the Protected Material at issue is privileged, protectable as a  
18 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to  
19 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,  
20 then the Receiving Party may file the Protected Material in the public record pursuant to Civil  
21 Local Rule 79-5(e) unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 Within 60 days after the later of: 1) dismissal of all claims and defenses in this  
24 action, with or without prejudice; or 2) final judgment herein after the completion and exhaustion  
25 of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for  
26 filing any motions or applications for extension of time pursuant to applicable law, each Party and  
27 Non-Party must return all materials designated by any other Producing Party or Non-Party under  
28 this Order to the Producing Party or Non-Party, or destroy such material, including all copies



1 thereof, and provide to the Producing Party or Non-Party a written certification of compliance  
2 with this provision. Notwithstanding this provision, outside counsel for a party or non-party are  
3 entitled to retain archival copies of all pleadings, filings, trial, deposition, and hearing transcripts,  
4 legal memoranda, correspondence, expert reports, attorney work product, and consultant and  
5 expert work product, and exhibits to any of these materials, even if such materials reflect materials  
6 designated under this Order. Notwithstanding this provision, no Party shall be required to return  
7 or destroy any materials designated under this Order that may exist on any disaster recovery  
8 backup system. Any such archival and/or backup copies of materials designated under this Order  
9 shall remain subject to the provisions of this Order.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: 4-19-2012


  
Attorneys for Plaintiff

12  
13 DATED: 4/20/2012

  
Attorneys for Defendant

14  
15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED: 4/23/2012

  
Claudia Wilken  
United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Powertech Tech., Inc. v. Tessera, Inc.*, No. 4:11-cv-06121-CW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]